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Supreme Court, U.S.
FILED

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NO.

IN THE SUPREME COURT OF THE UNITED STATES

WALTER BLOUNT, JR.

Petitioner,

vs.

PEOPLE OF STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner was denied fundamental due process and confrontational rights when the State of Illinois introduced the hearsay statement of Brian Moore and used it as the basis for its "gangbanging" arguments.

2. Whether petitioner was denied fundamental due process by the State of Illinois' improper closing argument.

THE LIST OF ALL PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF ILLINOIS

The parties to the proceedings in the Supreme Court of Illinois were respondent People of the State of Illinois and petitioner Walter Blount, Jr.

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Petitioner Walter Blount, Jr. respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS

The decision of the Supreme Court of Illinois was entered on October 3, 2001, is not officially reported, and is found at 2001 Ill. LEXUS 1366. The decision of the Appellate Court of Illinois was entered on June 26, 2001 and is not officially reported. The decision of the Appellate Court is found in the Appendix. The actions of the Circuit Court of Cook County, Illinois are unreported.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Illinois was entered on October 3, 2001. The Court's jurisdiction is invoked under 28 U.S.C. §1254(2).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution states that:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces or in the militia when in actual service of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due

process of law; nor shall private property be taken for public use without just compensation.

The Sixth Amendment states that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

The Fourteenth Amendment states, in part, that:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 5, 1997, the People of Illinois, by a grand jury, charged Mr. Blount, Marcus Blackwell, and Brian D. Holmes in a four-count indictment. Count 1 charged First Degree Murder, in violation of 720 ILCS 5/9-1-A(1). Count 2 charged First Degree Murder, in violation of 720 ILCS 5/9-

1-A(1). Count 3 charged Attempt First Degree Murder, in violation of 720 ILCS 5/8-4. Count 4 charged Aggravated Battery with a Firearm, in violation of 720 ILCS 5/12-4.2-A(1). C-00024-00028. Mr. Blount was released on bond during pretrial and trial proceedings.

Mr. Blackwell was tried and convicted by a jury on March 11, 1999. C-00005. He was sentenced to 84 years incarceration on Count I and 25 years incarceration on Count III, with Counts II and IV merging. C-00007.

Mr. Holmes, a cooperating witness who testified against both Mr. Blackwell and Mr. Blount, pled guilty on April 21, 1999 and was sentenced to 6 years incarceration, with credit of 654 days time served.

On April 8, 1999, a jury found Mr. Blount guilty on all Counts. C-00008. On May 26, 1999, the lower court sentenced Mr. Blount to consecutive sentences of 45 years incarceration on Count 1 (First Degree Murder) and 20 years incarceration on Count III, with Counts II and V merging. C-00008.

This is a petition for writ of certiorari that should be granted. This record presents serious issues of constitutional concern. Mr. Blount was denied fundamental due process and fundamental confrontation because the trial court permitted improper hearsay evidence of gang affiliation and motivation and because it allowed improper argument by the People during closing argument.

ARGUMENT

A. PETITIONER WALTER BLOUNT, JR. WAS DENIED FUNDAMENTAL DUE

PROCESS BY THE INTRODUCTION OF IMPROPER HEARSAY TESTIMONY WHICH WAS THE BASIS FOR THE STATE'S IMPROPER AND INADMISSIBLE "GANGBANGING" ARGUMENTS.

The lower court erred by allowing the jury to hear the out-of-court hearsay statement of Brian Moore. Mr. Holmes testified that, on the day of the shooting, Mr. Moore told him and the others in the automobile that "some Stones had been shooting at him in a Delta 88." There is no question but that this is an out-of-court statement offered for the truth. As a result, this statement was inadmissible hearsay. See E. Cleary, McCormick on Evidence §246 at 584 (2d ed. 1972) (defining hearsay as "testimony in court, or written evidence, of a statement made out-of-court, the statement being offered as an assertion to show the truth of the matter asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter.")

The lower court improperly ruled that the Moore statement was admissible under the coconspirator exception to the hearsay rule. The lower court reasoned that, but for Moore's statement to Mr. Holmes and the others, the shooting would not have occurred. In other words, the lower court ruled, as a matter of law, that Mr. Moore's words set the crime into action.

The Appellate Court held that this statement was "classic" hearsay and that it was not admitted for its truth. The problem with this postulation is that the statement was used for its truth at trial and on appeal. The State trumpeted a "gang war" without any admissible evidence to support it.

Obviously, Mr. Moore's statement to Mr. Holmes was not of a conspiratorial nature. Also obviously, the Moore statement was offered for its truth.

The Moore statement provided a motive about why this shooting occurred. There was no other motive evidence. Without Mr. Moore's statement, the jury would have been left with the highly impeached testimony of Mr. Holmes. For example, Mr. Holmes testified that he did not inform the police or State's Attorney that there was a fourth person in the vehicle. Mr. Holmes did not tell the officers that he spent 9 hours driving around Chicago on the day of the shooting. Mr. Moore could not account for his time in Chicago. Mr. Holmes testified that they spent all of this time in Chicago without getting any gas or stopping to use the restroom. Moreover, Mr. Blount provided credible witnesses who testified that he was in their presence during the time that Mr. Holmes testified that he was with him.

Perhaps the most serious consequence of the admission of the Moore hearsay statement was the introduction of gang affiliation and "gangbanging," the prosecution's main theme during trial. Without Mr. Moore's statement, there was no evidence that this particular shooting was gang inspired. Without anything more, the skeletal evidence of gang association leaves the jury to infer that gang membership is equivalent to drive-by murder. Such guilt by association is prohibited by our Constitution and cannot be used as a tool in our criminal justice system. See United States v. Rodriquez, 925 F.2d 1049, 1053-54 (7th Cir. 1991).

There is a strong prejudice against street gangs. Courts have repeatedly recognized "the insidious quality" of evidence of gang membership as well as "the damage it can do." United States v. Sargent, 98 F.3d 325, 328 (7th Cir.

1996). Because there is a "substantial risk of unfair prejudice attached to gang affiliation evidence," courts must consider the admissibility of such evidence very carefully. United States v. Irvin, 87 F.3d 860, 864 (7th Cir. 1996); Rodriguez, supra.; United States v. Lewis, 910 F.2d 1367, 1372 (7th Cir. 1990) (evidence of gang membership is likely to be "damaging to [defendant] in the eyes of the jury").

Evidence of gang affiliation is relevant only if it tends "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." People v. Lucas, 151 Ill.2d 461, 603 N.E.2d 460 (1992). There must be proof that any alleged gang membership is in some way related to the crime with which defendant is charged. People v. Smith, 141 Ill.2d 40, 565 N.E.2d 900 (1991).

Our courts are not hesitant to throw out criminal convictions based upon the inadmissibility of gang-related evidence. Smith, supra; People v. Colon, 249 Ill.App.3d 141, 618 N.E.2d 1067 (1st Dist. 1993).

B. PETITIONER WALTER BLOUNT, JR. WAS DENIED FUNDAMENTAL DUE PROCESS AS A RESULT OF THE STATE'S IMPROPER CLOSING ARGUMENT.

The State's closing argument was inappropriate. A fundamental rule regarding the propriety of a closing argument is that the argument cannot go outside the record. United States v. Latimer, 511 F.2d 498 (1975). In closing rebuttal argument, the State told the jury that Mr. Holmes testified against Mr. Blackwell. There was no record support for this statement. Mr. Blackwell's trial was severed from Walter's trial. It was inappropriate to attempt to substantiate

Mr. Holmes' testimony by reference to a codefendant's case. The State used this argument to bolster Mr. Holmes' credibility. The plain import of the argument is that, because Mr. Holmes testified against Mr. Blackwell, he was telling the truth against Mr. Blount.

This argument was clearly improper and prejudiced Mr. Blount. Williams v. State of Alaska, 629 P.2d 54 (1981).

This case requires a new trial.

CONCLUSION

A petition for a writ of certiorari should issue and the decision of the Supreme Court of Illinois against Walter Blount, Jr. should be reversed and remanded for further proceedings.

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